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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz

Addendum

The situation of indigenous peoples in Paraguay*,**

Summary

Paraguay has a constitutional framework in which the rights of indigenous peoples are recognized. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights to their lands, territories and natural resources. The lack of access to justice and the persistence of racism and discrimination are also causes for concern.

There is a widespread lack of legal protection for indigenous peoples' rights over their lands, territories and resources, which are vital to ensure their survival and uphold their dignity. This situation gives rise to numerous conflicts and human rights violations. The Government of Paraguay should regard this as an emergency situation.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and English only.

** The appendix is circulated in the language of submission only.

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Annex

[*English and Spanish only*]

Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, regarding the situation of indigenous peoples in Paraguay

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I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, visited Paraguay from 21 to 28 November 2014 at the invitation of the Government. The purpose of the Special Rapporteur's visit was to evaluate the human rights situation of indigenous peoples in the country in the light of international human rights standards and, on that basis, to provide the Government with comments and recommendations designed to support the full implementation of those standards.

2. In the capital, Asunción, the Special Rapporteur met with Supreme Court judges, the Ministers of Justice, Labour, Employment and Social Security, Women, and Public Health and Welfare, representatives of the Ministry of Foreign Affairs, Industry and Trade, Education and Culture, and the Interior and representatives of the Secretariat for Social Action, the Secretariat for the Environment and the National Institute for Indigenous Affairs (INDI). The Special Rapporteur also met with members of the Senate Committee on Indigenous Peoples and representatives of the international donor community, non-governmental organizations (NGOs) and the private sector.

3. The Special Rapporteur held a working meeting with representatives of indigenous organizations in the country (see the list given in the appendix) and separate meetings with the Federation for the Self-Determination of Indigenous Peoples (FAPI) and indigenous women.

4. The Special Rapporteur attended various meetings in Asunción and visited the city of Filadelfia (Boquerón Department in the Western Region (the Chaco)) and the Mbyá Guaraní community of Cheiro Ara Poty (Caaguazú Department, Eastern Region).

5. The Special Rapporteur thanks the Government of Paraguay for its close cooperation, which allowed her to do her work in a free and independent manner, and for the copious information provided by the institutions with whose representatives she met. She thanks INDI, in particular, for its contribution to her work. She would also like to express her gratitude to the representatives of indigenous peoples, NGOs and civil society and to the United Nations country team for their help in preparing for and managing her mission. She is especially grateful to the Human Rights Adviser of the Office of the High Commissioner for Human Rights (OHCHR) in Paraguay and her team. The Special Rapporteur is most grateful for the hospitality shown and information provided by the indigenous peoples with whom she dealt.

II. Indigenous peoples of Paraguay

6. According to the results of the Third National Census of Indigenous Peoples, in 2012 there were 115,944 indigenous persons in Paraguay (some 2 per cent of the population) living in 13 departments in both the Eastern Region and the Chaco, as well as the capital, Asunción.[1] The results of this census identify 19 indigenous peoples belonging to 5 linguistic families: Guaraní (Aché, Avá Guaraní, Mbya Guaraní, Paĩ Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zambuco (Ayoreo, Yvytoso, Tomáraho) and Guaicurú (Qom). These people live in 493 communities and 218 villages or neighbourhoods, for a total of 711

[1] This is the total based on the national census of the non-indigenous population and the Third National Census of Indigenous Peoples and Households. *Censo de comunidades de los pueblos indígenas. Resultados finales 2012*, Technical Planning Secretariat for Economic and Social Development, General Directorate for Statistics, Surveys and Censuses, April 2015.

settlements. Some 86.2 per cent of the 493 communities are incorporated and thus have legal capacity.

7. During the Spanish conquest and colonization of what is now Paraguay, beginning in the sixteenth century, the indigenous population was decimated, especially in the Eastern Region. Colonization of the Chaco intensified in the nineteenth century. Following independence in 1811, successive authoritarian regimes adopted policies aimed at confiscating indigenous lands, thus depriving indigenous peoples of their rights to their lands and resources. In 1918, the Government launched a policy to encourage foreign immigration by offering parcels of land. In the 1920s, Mennonite immigrants arrived and, assisted by legislation that gave them special rights and privileges, settled on indigenous lands, hiring their indigenous inhabitants as labourers.

8. During the General Alfredo Stroessner dictatorship (1954-1989), large numbers of indigenous peoples were displaced from their lands and became victims of grave and systematic violations of their rights, including attacks by civilians and the military against the Aché, Ayoreo, Maskoy and Toba Qom, extrajudicial killings and the abduction of indigenous children from their families, as documented by the Truth and Justice Commission in the work it carried out between 2003 and 2008 in an attempt to shed light on the crimes committed under the dictatorship. [2] According to the Commission, some of those same practices continued during the transition to democracy.

9. In the 1970s, indigenous peoples started to organize to defend their rights and interests at the regional and national levels and founded several indigenous organizations and groups. With the advent of democracy, Paraguay adopted a new Constitution in 1992 that recognizes the pre-existence and rights of indigenous peoples; existing legislative, administrative and public policy measures have not been sufficient to translate that recognition into action, however.

III. Legal and institutional framework

10. Paraguay is a signatory to the core international human rights and environmental treaties. At the regional level, it has ratified the American Convention on Human Rights and has recognized the jurisdiction of the Inter-American Court of Human Rights. In 1993, Paraguay ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). [3] At the 2007 United Nations General Assembly, it voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration").

11. Chapter V of the 1992 Constitution of Paraguay, which deals with indigenous rights, was at the time of its writing one of the most progressive legal instruments in existence in terms of the recognition of the rights of indigenous peoples. Article 62 recognizes the pre-existence of the indigenous peoples, defined as "groups from earlier cultures" at the time of the country's founding. Article 63 recognizes and guarantees the right of indigenous peoples to preserve and nurture their ethnic identity, to follow their own political, social, economic, cultural and religious norms and to be bound of their own free will by their customary laws in internal matters. Other constitutional provisions recognize the right to communal land ownership (art. 64) and indigenous participation (art. 65) and establish special measures to protect indigenous

[2] Truth and Justice Commission of Paraguay. Final report, vol. III, *Conclusions and Recommendations*, 2008.

[3] Paraguay had ratified the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107) in 1968.

peoples from depopulation, degradation of their habitat, environmental pollution, economic exploitation and cultural alienation (art. 66). They also include affirmative action measures. The principal legislative instrument relating to the rights of the indigenous peoples of Paraguay is the Indigenous Communities Statute (Act No. 904/81), which provides for the establishment of the government institution responsible for indigenous affairs, the National Institute for Indigenous Affairs (INDI), and defines the administrative procedures for recognition of the legal status and land claims of indigenous communities to be applied by INDI and the Social Welfare Institute (now the National Institute for Rural and Land Development).

12. In addition to that framework law, statutes on other issues include Act No. 43/89, which provides for a special regime for the regularization of title to indigenous settlements, and Act No. 323/107 on indigenous education. Some more general laws also contain references to indigenous peoples (e.g., the Agrarian Code (Act No. 1863/02) and the Code of Criminal Procedure (Act No. 1268/98)).[4]

13. In addition to INDI, which is the lead agency for indigenous issues, other government bodies deal with issues of importance to indigenous peoples, and some have specific departments for that purpose. They include the Directorate-General of Indigenous Education, the Directorate-General of Indigenous Health, the Original Peoples Department of the Secretariat for Social Action and a special unit of the Ministry for Women's Affairs that works to promote participation by indigenous women. Both the Chamber of Deputies and the Senate have established Committees on Indigenous Peoples.

14. The Human Rights Directorate of the Supreme Court also deals with issues relating to access to justice for indigenous peoples and the harmonization of customary and ordinary justice systems. The Public Prosecution Service has its Ethnic Rights Directorate.

15. Paraguay adopted its National Human Rights Plan in 2013. The executive branch has had its Human Rights Network in place since 2009. An inter-institutional mechanism, the Recommendations Monitoring System (SIMORE), has been established to follow up on the action taken pursuant to international recommendations relating to human rights, and the Government is up to date in its fulfilment of its reporting obligations to United Nations treaty bodies. The Inter-Agency Commission on the Enforcement of International Judgements (CICSI)[5] was established in 2009 to monitor and coordinate the efforts of the executive branch to comply with the judgements and recommendations of the inter-American system. Outstanding issues include the adoption of a general anti-discrimination law, the appointment of an ombudsman and implementation by the Office of the Ombudsman of the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

IV. Key concerns

16. As the Special Rapporteur said in the statement that she issued upon the conclusion of her mission, the foremost concerns relating to the rights of the indigenous peoples that she noted during her visit are: the lack of security of their rights to their lands, territories and resources; lack of access to justice and redress; lack of effective mechanisms for consultation and consent; racism and discrimination;

[4] See "Derechos indígenas y derechos humanos en Paraguay", compilation by the Human Rights Directorate of the Supreme Court.

[5] Decree 1595/09.

widespread poverty and extreme poverty; and barriers to their enjoyment of their economic, social, cultural and environmental rights.

A. Lands, territories and natural resources

17. Article 64 of the Paraguayan Constitution recognizes the right of indigenous communities to communal ownership of their lands, which are indivisible and non-transferable, not subject to seizure or income tax and may not be leased or used as security for contractual obligations. That article also stipulates that indigenous peoples may not be displaced without their consent. Nevertheless, in Paraguay there is a general lack of respect and protection for those rights; this has led to violent conflicts that have in turn given rise to human rights abuses. Existing barriers to the enjoyment of those rights have been described in the decisions of the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases.[6]

18. According to the results of the 2012 census, 375 indigenous communities had put forward land claims, although 3.9 per cent of those communities lacked legal title, while another 134 communities stated that they are landless; 145 communities reported that they were experiencing land-related problems, such as the wrongful appropriation of land by business enterprises, occupation of land by small-scale farmers, wrongful appropriation of land by public agencies, the existence of overlapping land titles and the rental or loan of land to third parties.

19. Indigenous peoples' access to land (referred to in the law as "settlements of indigenous peoples") is regulated in the Indigenous Communities Statute, which states that the land area to be awarded to indigenous communities shall be determined based on the number of inhabitants and the amount of land necessary to ensure the cultural and economic viability of the community and its future growth, with a minimum of 20 hectares per family in the Eastern Region and 100 hectares per family in the Chaco. The law sets out the procedures for the submission of land claims and the award of title to communal lands.

20. Given the general situation in the country, the law appears to fall short of what is needed to ensure implementation of the constitutional and international standards relating to the rights of indigenous peoples. The legal framework suffers from conceptual shortcomings, as it characterizes land as no more than a productive resource without taking into account traditional land uses and the cultural and spiritual values that indigenous peoples associate with the land. According to information provided to the Special Rapporteur, the procedure for securing land titles is bureaucratic, difficult to follow and slow. The privatization of large amounts of land and the lack of a proper land registry have given rise to the existence of overlapping ownership deeds that serve as a basis for multiple claims to the same parcels. Conflicting claims are often settled in favour of business enterprises, thus depriving indigenous peoples of their lands. According to official sources, the expropriation process that should be followed in the case of indigenous land awards is often unworkable because of high land prices, and this situation often redounds to the benefit of private landowners. As a result, the issuance of land titles is frequently limited to non-contiguous parcels that are then broken up into lots which are often too small to be of practical use.

[6] Inter-American Court of Human Rights, *Yakye Axa indigenous community v. Paraguay*, decision of 17 June 2005, series C, No. 125; *Sawhoyamaxa indigenous community v. Paraguay*, decision of 29 March 2006, series C, No. 146; *Xakmok Kasek indigenous community v. Paraguay*, decision of 24 August 2010, series C, No. 214.

21. It has been difficult for the institutions responsible for that process — INDI and the National Institute for Rural and Land Development (INDERT) — to coordinate their efforts because of differences in their statutes, mandates and procedures. Since INDI is lower down in the governmental hierarchy than INDERT and the Secretariat for the Environment, it is difficult for it to take action to ensure full implementation of the law by these two institutions. It became clear to the Special Rapporteur that, given its current budget and endowment of human and technical resources, INDI will have difficulty safeguarding the rights of indigenous peoples to their lands, territories and natural resources. The Special Rapporteur was provided with information on a draft bill to convert INDI into a ministry for indigenous peoples. Such a change in hierarchy could help to ensure that the new institution would have an adequate, regular and predictable budget and would be vested with the authority it needs in order to meet its responsibilities.

22. The Special Rapporteur heard numerous complaints about indigenous lands being taken over by settlers, farmers or forestry enterprises, large soybean producers or ranchers and about the resulting clashes. According to the information provided to the Special Rapporteur, many of these disputes are resolved in favour of third parties for various reasons, including racism and discrimination against indigenous peoples on the part of provincial political bodies that sometimes are linked to the interests of the groups occupying the land. In some cases, the situation is the result of the justice system's failure to fully apply existing constitutional and international standards, which gives rise to a climate of impunity. The Special Rapporteur is concerned by reports of violations of the land rights of indigenous persons by public institutions. In particular, references have been made to the issuance of environmental permits by the Secretariat for the Environment that do not conform to Paraguayan law or international standards relating to the rights of indigenous peoples.

23. The Special Rapporteur was apprised of specific cases that attest to indigenous peoples' lack of access to and control over their lands, territories and natural resources. One case in point is the Totobiegosode-Ayoreo peoples, who are divided into two groups, one settled in the communities of Chaidi and Arocojnadi (Alto Paraguay Department in the Chaco) and another, voluntarily isolated group (Jonoine-Urasade). Since 1993, the Totobiegosode have been claiming 550,000 hectares that they consider to be part of their traditional territory. Those lands are part of the El Chaco Biosphere Reserve, which was established in 2005 by the United Nations Educational, Scientific and Cultural Organization (UNESCO), but this designation has not spared these lands from massive deforestation. In 2001, in view of the limitations of the existing legal and administrative framework for according recognition of the contiguous tracts of land which they claim, the Tobobiegosode requested that the lands in question be declared the Tangible and Intangible Natural and Cultural Heritage Lands of the Ayoreo and Totobiegosode.[7]

24. The Government has granted title solely to non-contiguous areas and has acknowledged its inability to carry out the necessary expropriations.[8] The lands to which their claims have been granted do not provide the territorial contiguity needed to guarantee the rights and survival of the Totobiegosode. Furthermore, the Special Rapporteur was informed that the Secretariat for the Environment has issued environmental permits for livestock-raising, forestry and oil exploration in the claimed territories without consulting the communities concerned, in violation of Act No. 43/89, which prohibits any change in land use in territories claimed by indigenous

[7] Resolution 1/2001 of the Ministry of Education and Culture, ratified by the National Secretariat for Culture in its resolution 491/2009.

[8] Reply of the Government to a letter from Special Rapporteur James Anaya (A/HRC/15/37/Add.1).

peoples while the adjudication process is under way. Those activities could have severe effects on the families living in isolation.

25. The Special Rapporteur also met with the legal representatives of Yaguareté Porá Ltd., one of the private companies that owns land in the claimed area, according to whom the company does not want to leave and is proposing as a solution the establishment of a permanent private protected area, the Yaguareté Porá Natural Reserve,[9] to serve as a biological corridor and passageway between the lands in question for use by peoples living in isolation. The company, while saying that it wishes to reach a solution through dialogue, has continued to file claims with the courts (including one in which it requests cancellation of the Natural and Cultural Heritage Lands designation). The company is reportedly still operating in the disputed territories on the basis of the environmental permits issued by the Secretariat for the Environment, even though those permits have been repeatedly revoked by the courts.

26. Another source of concern is the situation of the Cheiro Ara Poty community of the Mbyá Guaraní people (Caaguazú Department), who submitted a land claim in 1981 that was approved by the National Assembly in 1989. An order for the expropriation of the lands in question from the Sommerfeld Komitee company was issued. Following a series of claims and appeals before the courts which were won by INDI and that community, Sommerfeld Komitee has still not withdrawn the funds deposited by INDI to pay for the land. As a result, no transfer agreement has been signed and it has not been possible to transfer title to the community.

27. The situation of communities whose lands are in the process of being officially recognized is also a source of concern. For example, the Avá Guaraní community of the Y'apo people submitted a claim for 5,000 hectares, part of its traditional territory, in 1999. Those lands, including Laguna San Antonio, a sacred place for the community, currently belong to the company Laguna Ltd. The community says that the company's private security firm constantly harasses them in an effort to make them leave their current settlement. According to reports brought to the attention of the Special Rapporteur, there was an attempt to forcibly expel the community in May 2014, followed by an attack one month later during which 50 armed civilians invaded the community, wounding, robbing and firing upon the residents. Despite the rapid response of the authorities following that attack, it is worrisome that no measures for protecting this are currently in place.

B. Access to justice

1. The legal system and indigenous rights

28. The Paraguayan Constitution recognizes the right of indigenous peoples to "freely apply their political, social, economic, cultural and religious systems and to be bound of their own free will by their customary laws in matters relating to their own communities" (art. 63). Article 268, which deals with the Public Prosecution Service, establishes that its duties include the pursuance of public legal action in order to, inter alia, defend "the rights of indigenous peoples".

29. These constitutional provisions have been elaborated upon in other laws and public policies. The Code of Criminal Procedure outlines the procedures to be followed for the prosecution of punishable offences related to indigenous peoples. The Ethnic Rights Directorate of the Public Prosecution Service is responsible for ensuring

[9] See Decree No. 11726 of 11 January 2008.

compliance with regulations governing indigenous rights. Offences involving members of indigenous peoples are to be immediately submitted to this Directorate.[10]

30. Paraguay has undertaken to apply the Brasilia Regulations Regarding Access to Justice for Vulnerable People, which include indigenous peoples within its definition of vulnerable groups.[11] The measures adopted to this end include the provision of indigenous interpreters during legal proceedings, although, as acknowledged by the Supreme Court itself, progress in this connection has been slow to materialize. The Human Rights Directorate of the Supreme Court has launched various activities aimed at harmonizing customary law and ordinary law and is providing training for judges and legal officials about the rights of indigenous peoples and awareness-raising opportunities in this regard. Existing initiatives relating to indigenous peoples need to be strengthened and consolidated in order to bring about the necessary changes in the legal system.

31. Notwithstanding these important initiatives, access to justice continues to be severely limited for the country's indigenous populations, and substantive structural and procedural problems remain. The Special Rapporteur has learned of various contradictory decisions that have been issued by different courts. This situation not only undermines legal certainty and clarity for all parties involved, but also hinders the effective exercise of rights, particularly indigenous land rights. Information has also been received that reveals that racist and discriminatory attitudes remain deeply embedded, especially in courts of first instance and provincial courts, and that there is a lack of familiarity with international human rights standards and the judgements of the Inter-American Court of Human Rights. Some public prosecutors disregard the observations of the Ethnic Rights Directorate, and there are not enough public defenders to ensure access to justice for indigenous peoples. The Special Rapporteur has noted with concern that indigenous peoples' own legal systems are rarely promoted or validated as suitable mechanisms for the administration of justice, nor are they coordinated with State legal systems as provided for by international instruments. The Special Rapporteur was informed that, on 22 July 2015, as part of the Government's efforts to promote and comply with the provisions of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) regarding customary law, the Human Rights Directorate of the Supreme Court convened the first meeting for legal officials concerning the process to be used for validating curricular proposals designed to uphold indigenous rights. Participants pledged to develop proposals concerning the curricula to be used in training civil servants and judges in this area. The Special Rapporteur supports this type of training and urges the authorities to ensure that it continues.

2. Access to redress

32. The Special Rapporteur received numerous reports about the lack of redress in cases where the human rights of indigenous peoples have been violated. She has learned, for example, about the situation of the Mbyá Guaraní communities in the Caazapá, Itapúa and Misiones departments, who were moved from their lands in the 1970s — without adequate compensation — to make way for the building of the Yacyretá hydroelectric dam. By way of redress, the Mbyá Guaraní organizations have called for the transfer of title to some 50,000 hectares of what remains of the forests that were formerly part of their ancestral lands, which they call Tekoha Guasú. In 1992, the Secretariat for the Environment made those lands part of the San Rafael National Park without prior consultation with the indigenous communities in the area.

[10] Resolution No. 3918/09.

[11] Approved in 2008 at the Fourteenth Meeting of the Ibero-American Judicial Summit.

33. In 2008, INDI recognized Tekoha Guasú as traditional Mbyá Guaraní land.[12] It later acknowledged the extent of the damage caused to this community as a result of the construction of the Yacyretá dam and confirmed the need to provide recompense for the "historic debt" owed to these peoples.[13] In February 2014, INDI obtained 495 hectares in the area in order to begin the process of consolidating Tekoha Guasú as compensation for the lands and islands that had been lost. For full reparation to be made for the harm done, it is important to conclude the process of allocating the titles to the reclaimed lands and of dealing with the requests put forward by indigenous organizations.

34. One important issue that is linked with redress in cases where the human rights of indigenous peoples have been violated is the implementation of the judgements handed down by the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases. The Special Rapporteur has been made aware of the measures adopted to comply with those judgements, along with the limitations thereof.

35. The Court ruled that the State has an obligation to adopt the necessary legislative, administrative and other measures to establish an efficient mechanism that will enable indigenous peoples to reclaim their ancestral lands and thus exercise their property rights. This mechanism must also take into account these peoples' customary laws, values and customs. This obligation has not yet been discharged, and its fulfilment is essential if many of the indigenous land rights issues described in this report are to be resolved.

36. In respect of the provisions referring specifically to the petitioning communities in the above-mentioned judgements, the Government has reportedly taken some decisive steps towards returning these communities' ancestral lands to them by providing the necessary funding and acquiring or expropriating lands of the Yakyé Axa and Sawhoyamaxa communities. However, the land titles have, for various reasons, still not been transferred, and these communities have therefore not been able to resettle these lands in a secure fashion. In the case of the Xakmók Kasék community, part of the lands due to be returned have still not been acquired. In all three cases, the compensation awarded by the Court — including, in this case, overdue interest payments — has been paid to the communities. With regard to the obligation to establish a community development programme and fund, in the first two cases the money was illegally withdrawn and the cases are awaiting trial. In the third case, the Government has not responded to requests from the community, even though the deadline was in 2011.

37. In all three cases, the Court ruled that certain social services should be provided to the communities. Although some services have been made available, there have been shortfalls in this respect, and supplies of food and water have been insufficient and erratic. The same kinds of problems have been reported in the case of communications services for the Xakmók Kasék community. Public dissemination of the judgements has been no more than partial, as is also the case with the identification programme in Sawhoyamaxa and Xakmók Kasék.

38. In view of the foregoing, it is clear that the measures taken pursuant to the judgements are — although substantive — not sufficient for them to be considered to have been entirely fulfilled, whether in the case of specific measures in respect of the complainants or the general measures outlined by the Court.

[12] Resolution 1178/08.
[13] Resolution 23/2018.

C. Participation, consultation and consent

39. There is a widespread problem in terms of non-compliance with the State's obligation to engage in consultation before it adopts legislative, political and/or administrative measures that directly affect the indigenous peoples and their lands, territories and natural resources.

40. The majority of institutional projects and programmes for indigenous peoples about which the Special Rapporteur has received information, including those conducted by the Secretariat for Social Action, have not included a consultation process. In respect of the investment projects affecting lands of indigenous peoples, the Special Rapporteur has received reports that the communities that could potentially be affected by oil extraction projects and the construction of an oil pipeline and aqueduct in the Chaco region have not been consulted about these projects and, in fact, have not even received any information about them. Reports also indicate that environmental permits for logging and other activities are being granted without prior consultation or consent. This also seems to be the case with the establishment of protected areas and the introduction of other conservation initiatives, such as the creation of the San Rafael National Park reserve, which encompasses 10 indigenous communities and 12 traditional or religious sites.

41. The Special Rapporteur has been informed of a proposed law on consultation and free, prior and informed consent which has been approved by various indigenous organizations and submitted to the Government for its consideration.[14] Apparently, various draft bills have been drawn up by different stakeholders. Without commenting on the content of the various proposals, the Special Rapporteur wishes to emphasize that any measure that is introduced in an effort to ensure that the State meets its obligations concerning consultation with indigenous peoples must be in line with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples and should be developed in conjunction with the indigenous peoples of Paraguay.

42. The Special Rapporteur noted a disturbing lack of participation on the part of indigenous peoples in decision-making in almost all areas of public life. In terms of their participation in the country's political affairs, documented practices used during elections, such as "*acarreamiento*" (mass transportation) and "*acorralamiento*" (roundups and detentions), constitute serious violations of their political and civil rights.[15]

D. Racism and discrimination

43. The Special Rapporteur believes that racism and discrimination are at the heart of many of the problems faced by indigenous peoples in Paraguay. The indigenous populations have historically suffered, and continue to suffer, from multiple, intersectional forms of discrimination that interfere with their enjoyment of all their human rights. Although discrimination is prohibited under the Constitution, the State

[14] Federation for the Self-determination of the Indigenous Peoples and the United Nations Development Programme, *Propuesta de protocolo para un Proceso de Consulta y Consentimiento con los Pueblos Indígenas del Paraguay* (Proposed protocol for a process of consultation and consent with the indigenous peoples of Paraguay), 2013.

[15] European Union Election observation mission. Final report — General elections (2013); Organization of American States, *Informe de la Misión de Observación Electoral de la Organización de Estados Americanos sobre las Elecciones Generales celebradas en la República del Paraguay el 21 de abril de 2013* (OEA/Ser.D/XX-SG/DCOE/II.85 (2014)), p. 43.

has not taken the necessary measures to put this prohibition into practice, and a general anti-discrimination law has yet to be passed. The Truth and Justice Commission has made some important remarks and recommendations that have not yet been acted upon.

44. Socioeconomic marginalization is due, in part, to racism and discrimination, which are also reflected in the measures intended to combat its effects. The Special Rapporteur found that a paternalistic approach was being taken in many of the programmes developed by government bodies, including those being conducted by INDI, with indigenous peoples and individuals being viewed as defenceless recipients or wards of the State rather than as the holders of rights that should be respected, protected and applied.

45. The patterns of systematic discrimination that persist in the Mennonite settlements, where a State presence is notably absent, are of concern and are associated with multiple violations of the human rights of the indigenous peoples living there.[16] During the Special Rapporteur's visit to the Ujeslavos community, she was told about discriminatory practices dealing with access to employment and health-care services that deprive indigenous employees of sufficient social protection. She also learned how the use of temporary employment arrangements effectively limit workers' social security benefits and their health-care coverage under the Ayuda Mutua Hospitalaria insurance programme.

46. Some recent articles and statements that have appeared in the press also reflect a deep-rooted racist attitude towards indigenous people. This attitude has been fuelled by the plight of displaced indigenous peoples in the cities, where they find themselves in difficult straits. The Special Rapporteur has also been apprised of instances of discrimination in working conditions and access to employment.

47. Efforts to combat discrimination are hampered by a lack of disaggregated data on the situation of indigenous peoples. Problems still remain in terms of providing national identity documentation to indigenous persons, although the Ministry of the Interior does state that it is making progress in this area.

E. Economic, social and cultural rights

1. Socioeconomic situation

48. The socioeconomic problems of the indigenous peoples of Paraguay cannot be separated from the socioeconomic circumstances of the country as a whole. As pointed out by the Special Rapporteur on extreme poverty and human rights, there are a series of structural factors in Paraguay, including corruption, vast inequality, a regressive tax structure, the concentration of landownership and environmental degradation, which, combined with institutional weaknesses, hinder progress in alleviating poverty.[17] The country's development model, which promotes rapid economic growth through activities such as mono-cropping — particularly in the case of the massive expansion of soybean cultivation — and livestock, has resulted in the highest rate of deforestation in the world, exacerbating existing environmental problems caused by transgenic crops and the extensive use of chemical fertilizers and pesticides.

49. Although overall poverty in Paraguay[18] appears to have declined, available data indicate that the rates of poverty and extreme poverty among indigenous peoples are

[16] See A/HRC/19/60/Add.1, para. 49.

[17] A/HRC/20/25/Add.2.

[18] 2014 Continuing Household Survey. Main results for poverty and income distribution. Directorate-General for Statistics, Surveys and Censuses (DGEEC).

75 per cent and 60 per cent, respectively, thus far exceeding the national average. Among indigenous children under the age of 5, the rate of extreme poverty is 63 per cent (compared to the national average of 26 per cent), and the chronic malnutrition rate is 41.7 per cent (compared to 17.5 per cent).[19] Representatives of indigenous groups mentioned the lack of food security and of access to drinking water (especially in the Chaco region) as serious and recurrent problems.

50. The poverty and extreme poverty afflicting most of the indigenous communities of Paraguay are closely tied to their lack of access to and control over their lands, territories and natural resources or to their outright loss of these assets. As a result, they have witnessed the disappearance of their livelihoods and ways of life without being granted, in exchange, access to the country's mainstream economic system. Thus, indigenous peoples lack viable economic options even when they have title to their lands.

51. Given their special relationship with and reliance on their lands, territories and natural resources, indigenous peoples are among those segments of the population that are most affected by unsustainable forms of production and environmental destruction. In addition to information concerning the loss of forests and other ecosystems and the decline of traditional knowledge and its associated economic systems, the Special Rapporteur received information on the impact of the use of pesticides, especially on large soybean plantations, which is interfering with indigenous peoples' enjoyment of their right to health and other rights.

52. Noteworthy among the many problems observed by the Special Rapporteur during her visit is the prevalence of discriminatory views about the ability of indigenous peoples to develop their own economic alternatives on the basis of both traditional and modern-day activities, such as those related to conservation, environmental services or climate change mitigation and adaptation (in particular the implementation of the REDD+ Programme). In this connection, the Special Rapporteur was informed about a number of valuable initiatives being undertaken by indigenous organizations with the aim of drafting public policy proposals. These initiatives have not as yet been duly taken into account.[20]

53. Another serious consequence of the alarming socioeconomic situation of indigenous peoples is an increase in the practice of renting or leasing community lands to third parties. This practice, which is found among 36.9 per cent of the indigenous communities, is unlawful but, above all, is evidence of these communities' high level of socioeconomic vulnerability.

54. Poverty and the lack of security of land tenure have, in recent years, propelled increasing numbers of indigenous migrants towards urban areas. The Special Rapporteur was able to visit the Ayoreo settlement at the Pilgrim House in Filadelfia, where she heard repeated complaints about the worrisome situation of indigenous persons who have been displaced to urban centres. She was told that, in Asunción, fences have been erected in public parks to prevent indigenous migrants from setting up camps in them. She heard reports of the forced relocation, without the necessary safeguards, of indigenous people from cities to other locations. She received reports

[19] Country report "Diagnostico y propuestas para el desarrollo de una politica publica de seguridad alimentaria y nutricional de los pueblos indigenas en Paraguay" Ministerio de Agricultura y Ganaderia (Diagnosis and proposals for the development of a public policy on food and nutritional security for the indigenous peoples of Paraguay) Ministry of Agriculture and Livestock, National Institute of Indigenous Affairs (INDI), Food and Agriculture Organization (FAO) (2014).

[20] Public policy proposals concerning indigenous peoples, United Nations Development Programme (UNDP), Federacion por la Autodeterminación de los Pueblos Indigenas (FAPI), Pro Comunidades Indigenas (PCI). Submitted to the Government in 2009.

concerning a lack of personal security, an increase in the number of indigenous street children and human trafficking, especially in border areas.

55. In order to overcome this distressing situation, urgent and effective public policies must be put into place. However, the Government's 2014-2030 National Development Plan does not refer specifically to indigenous peoples or to their rights, nor is there any indication that the Plan was formulated in conjunction with indigenous peoples on the basis of a participatory or consultative process.

56. The Special Rapporteur received extensive information about the various social programmes of the Secretariat for Social Action, whose beneficiaries include indigenous persons. The Tekoporã Programme provides cash transfers to families living in extreme poverty who meet certain conditions. In 2014, the programme was expanded to include the indigenous communities of the Chaco, providing coverage for up to 80 per cent of these communities, or 10,000 persons, of whom 52 per cent are women. An assistance programme for fishers' associations has benefited 529 men and 572 women from 12 indigenous communities. Five individual projects submitted by indigenous communities have been included in the Second Paraguayan Social Investment Programme (PROPAIS II), while an estimated outlay of US$ 250,000 under the Social Development Plan has benefited several indigenous communities in the Chaco region. There are plans to extend other programmes, such as the MERCOSUR Structural Convergence Fund (FOCEM) Yporã Project, to include indigenous communities. The Original Peoples Department is working with the Guaná community, which is at risk of extinction, and with indigenous communities in the "social regions" covered by the Secretariat for Social Action that are in the process of regularizing their titles to their lands.

57. According to the Secretariat for Social Action, the evaluation of the Tekoporã Programme's impact on indigenous peoples has highlighted the need to make certain adjustments in order to give full effect to indigenous peoples' rights by incorporating a community dimension into the transfers and adapting conditions to the beneficiaries' needs. A first step towards reorienting the programmes and ensuring their effectiveness for indigenous peoples was the development of a consultation protocol, which is currently being considered for approval by INDI.[21] There are also plans to provide staff members of the Secretariat for Social Action with training in implementing the protocol and working with indigenous communities.

58. Compliance with the protocol may serve to correct some of the problems encountered in current programmes. However, certain structural problems must be resolved in order to ensure that such programmes have a real impact. There is a need for predictable and sufficient budgets (social spending in Paraguay is much lower than the regional average), and a human rights approach needs to be mainstreamed in all public policies concerning indigenous peoples. Inter-agency coordination also needs to be improved. Public policies will be much more effective if they are designed, monitored, implemented and evaluated with the full and effective participation of indigenous peoples.

59. In order to design public policies that focus on indigenous peoples, disaggregated data and indicators, including appropriate indicators for indigenous peoples themselves, are essential. The participatory and differentiated approach used by INDI in connection with the 2012 census may be considered a best practice for the collection of disaggregated data that are relevant for the formulation, in conjunction with indigenous peoples, of public policies that take into account their own priorities and visions of development.

[21] SAS Protocol for assistance to the indigenous communities

2. Education

60. Paraguay is a multicultural and multilingual country with two official languages: Spanish and Guaraní. The Constitution also recognizes indigenous languages as part of the nation's cultural heritage.

61. Indigenous peoples' contribution to the cultural wealth of the nation notwithstanding, the indigenous population continues to encounter enormous barriers to the enjoyment of the right to education. According to data analysed by the United Nations Children's Fund (UNICEF),[22] the illiteracy rate among the indigenous population of Paraguay is 40 per cent, compared with 5.1 per cent for the non-indigenous population, and the average length of completed studies for persons over the age of 15 is three years for indigenous persons and eight years for non-indigenous persons. Enrolment in primary education has been increasing in stages, but there are still large discrepancies between the gross school enrolment rates of the indigenous and non-indigenous populations. According to the 2012 census results, 70 per cent of indigenous communities, villages or neighbourhoods have a local school, while 71.9 per cent report a lack of classrooms and problems relating to school infrastructure. In 27 per cent of the communities, there are no teachers, and only 45 communities have a secondary school.

62. Indigenous education in Paraguay is governed by Act No. 3231/07, which provides for the establishment of the Directorate-General of Indigenous Education. This law stipulates that the State shall guarantee "the right of indigenous peoples to apply their cultural norms and forms of education" and that indigenous education shall serve to "strengthen their culture and facilitate their active participation in society". It also provides for the establishment of the National Indigenous Education Council, which includes representatives of local indigenous education councils that are made up of members of indigenous assemblies and organizations in various parts of the country.

63. The stated objective of the Directorate-General of Indigenous Education is to strengthen indigenous education and to promote interculturalism by implementing the 2013-2018 National Plurilingual Education Plan for the Indigenous Peoples of Paraguay. In preschool and primary educational institutions in indigenous communities, efforts have been made to promote training for indigenous teachers and teaching in the relevant mother tongue, as well as to support the development, in conjunction with the communities concerned, of culturally appropriate educational materials. In order to link education to other aspects of indigenous life, the Directorate-General is carrying out various initiatives, one of which focuses on the incorporation of traditional foods into school meals. It also envisages improving access to higher and university education, since, despite the fact that such education is free for indigenous students, the number of those who can actually take advantage of it remains very low, as scholarships do not cover travel or accommodation and schools are usually located in urban areas that are far away from these communities. The Directorate-General has acknowledged that its budget is insufficient and unpredictable, which hinders the conversion of such programmes into permanent policy instruments for addressing the problems confronted by the indigenous peoples in terms of the full realization of their right to higher education.

64. In her meetings with indigenous representatives and civil society organizations, the Special Rapporteur listened to complaints about impediments to progress towards these objectives, the lack of participation by indigenous persons in the preparation of legislation and programmes for its implementation, and the persistence of the two fold

[22] UNICEF, Ministry of Education and Culture, Instituto de Desarrollo, *Escuelas de comunidades indígenas en Paraguay. Análisis de datos 2006-2011*, Asunción, 2013, p. 22.

problem of a lack of support for the development of indigenous peoples' own educational systems and a lack of support for efforts to open up their access to national forms of education.

3. Health

65. The Special Rapporteur received worrisome reports about indigenous peoples' enjoyment of their right to health. According to the 2012 census results, 455 of the country's 711 indigenous communities do not have health facilities of any kind, and 253 have no "health promoter". Although 573 communities do receive some services from a family health unit, the exact nature of those services is not known, and the frequency of care is, in many cases, insufficient.

66. In her meeting with indigenous women, the Special Rapporteur was informed of many health-related problems, including the greater incidence of certain diseases, such as colon and uterine cancer, which they attributed to the effects of the aerial spraying of the soybean crops surrounding indigenous communities, the use of genetically modified seeds and plants, and the erosion of their traditional diet. They also said that some medical treatments were culturally inappropriate and that there was a lack of access to health-care infrastructure, including hospitals, because these facilities are located far away from indigenous communities. Transport problems are such that some patients die along the way, before they can reach a health-care centre. Health facilities in indigenous communities lack sufficient supplies of medicines and basic equipment, and health promoters receive no pay. As acknowledged by government sources, the demand for doctors in some of the remote areas where indigenous communities are located has not been met.

67. Indigenous persons appear to not have enough trust in health-care services to seek them out, especially when it comes to diseases such as HIV/AIDS. This disease appears to be spreading rapidly among indigenous communities, a phenomenon that appears to be linked to a lack of special measures and to the prevalence of prostitution and sexual exploitation, especially in border areas, although disaggregated data on these factors could not be obtained. The Special Rapporteur received many reports of discrimination against persons of indigenous origin in the national health-care system and in other private health-care assistance programmes, especially in the Chaco region.

68. Following her visit, the Special Rapporteur was informed that a new law on indigenous peoples' health that reflects a proposal formulated by indigenous organizations had gone through its first reading. She hopes that this law will be formally adopted and that all the necessary resources for its full implementation will be allocated.

F. Indigenous women

69. The Special Rapporteur held a meeting with indigenous women to hear their specific concerns. The participants referred to the indigenous communities' lack of control over their lands, territories and resources and to their fears in the face of the ongoing threat of invasions of their lands by ranchers or cattle-breeders, which prevents them from practising their traditional way of life. They denounced certain indigenous leaders' practice of renting out community lands for very little money, which is an illegal practice that runs contrary to the wishes of the communities, especially their women members. They described the problems that they encounter in seeking to exercise their right to health, as mentioned earlier, and the various types of discrimination that they face from both non-indigenous persons and indigenous men, in the civil service and in police stations. This situation impairs their ability to lodge

complaints when they are the victims of criminal offences or witnesses of such offences, including drug trafficking and trafficking in persons.

70. The Special Rapporteur was informed of various initiatives taken by indigenous women's organizations, such as the Articulación de Mujeres Indígenas del Paraguay (Network of Indigenous Women of Paraguay), which adopted the Asunción Declaration in 2014 in order to set forth their problems and demands.[23]

71. Owing to a lack of disaggregated data, it is difficult to assess the situation of indigenous women in the country. There are no disaggregated data in the first country report on violence against women, which makes it difficult for them to ensure that their specific needs are reflected in the preliminary bill on this subject being prepared by the Ministry. The lack of such data also hinders the work of the Inter-Agency Board on Human Trafficking and other initiatives that could play a very useful role in addressing some of the issues that they raised.

72. Paraguay has recently established the Ministry for Women's Affairs. The Ministry has a special unit whose work focuses on facilitating the direct participation of indigenous women,[24] and this unit is drafting a protocol for working with women from the Ayoreo Totobiegosode community of Chaidi. The Ministry provided general information to the Special Rapporteur on a project to promote the breeding of goats for meat and milk as a means of diversifying the production of high-protein foods for indigenous families in the Chaidi community, raising household incomes and consolidating the food security of the community. The Special Rapporteur hopes that this institutional platform and the above-mentioned project will be given the necessary support and resources so that new and ongoing initiatives will be able to address the specific problems faced by indigenous women in Paraguay.

G. Indigenous peoples in voluntary isolation or initial contact

73. The Special Rapporteur received information about the presence of groups living in voluntary isolation in the Chaco and the Eastern Region who belong to the Ayoreo and Mbyá Guarani peoples, as well as about the Ayoreo Totobiegosode groups, who can be considered as being in a situation of initial contact. She was also informed about the serious threats posed to groups in isolation by the relentless spread of deforestation and the privatization of the territories where they live. She heard various reports about situations in which imminent contact could occur, with the concomitant risk to the survival of these groups, especially in the territory of the Ayoreo Totobiegosode. No government mechanisms or protocols have been devised to forestall these risks.

74. Given this state of affairs, State institutions must take steps to protect and ensure the survival of these groups and to respect their decision to remain in isolation. Particular attention should be devoted to the Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay, which were issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2012.

[23] Declaration of the first national meeting of indigenous women in Paraguay, "Defensoras de la identidad y la vida" (Defenders of identity and way of life), Asunción, 30 July 2014 to 1 August 2014.

[24] "Kuña Guarani Aty Sistematizacion del Primer Encuentro", Kuña Guarani Aty Commission, National Anti-Poverty Directorate (DIPLANP), Asunción, 2013. "Kuña Guarani Aty Sistematización del Segundo Encuentro", Ministry for Women's Affairs, Coordinación Nacional de Pastoral Indígena (CONAPI), Asunción, 2015.

V. Conclusions and recommendations

A. Conclusions

75. **Paraguay has a constitutional framework in which the rights of indigenous peoples are recognized. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights over their lands, territories and natural resources. The lack of access to justice and the persistence of racism and discrimination are also causes for concern.**

76. **The Special Rapporteur has observed a widespread lack of legal protection for indigenous peoples' rights over their lands, territories and resources, which are vital to ensure their survival and uphold their dignity. This situation gives rise to numerous conflicts and subsequent human rights violations. The Government of Paraguay should regard this as an emergency situation.**

77. **The indigenous peoples of Paraguay are also subject to widespread poverty and extreme poverty. In order to alleviate the situation, what is needed is coordinated and systematic action on the part of all institutions, donors and other stakeholders to develop public policies, in conjunction with the indigenous peoples concerned, to address its root causes. Short-term projects and programmes which are primarily funded by foreign aid have proved to fall short of what is needed to resolve the serious problems that exist. Institutional weaknesses and a lack of inter-agency coordination also diminish the State's capacity to respond to this critical situation.**

B. General recommendations

78. **In the light of the above conclusions, the Special Rapporteur would like to present the Government of Paraguay with the following recommendations, which should be implemented in collaboration with the indigenous peoples of the country.**

Lands, territories and natural resources

79. **The Special Rapporteur recommends:**

(a) The establishment and adoption, with the full participation of the indigenous peoples concerned, of a new legal framework for indigenous peoples' rights over their lands, territories and natural resources, in accordance with the constitutional framework and relevant international standards. The new legislation should establish an accessible, rapid and effective procedure for the adjudication of land titles and should provide for a review of existing laws on expropriation;

(b) The use of all financial, judicial and other measures needed to resolve existing conflicts concerning the ownership of indigenous lands as quickly as possible, in keeping with the parameters set by the rulings of the Inter-American Court of Human Rights in the *Yakye Axa*, *Sawhoyamaxa* and *Xakmok Kasek* cases;

(c) The effective enforcement of legislation relating to the protection of lands claimed by indigenous communities and the development and implementation of suitable instruments and mechanisms, including early warning

systems, arrangements for expedited legal action and on-site monitoring systems, in order to ensure the security of land tenure of indigenous peoples and to prevent third parties from intruding into their lands, while imposing appropriate penalties for such intrusions when they occur and compensating the affected communities for any damage that they may have sustained;

(d) The provision of training to the police force and other law enforcement agencies of the State regarding the rules of international law concerning the forced eviction of indigenous peoples so as to ensure that their actions are fully consistent with international human rights standards and international instruments relating to the rights of indigenous peoples;

(e) The full implementation, as a matter of urgency, of the decisions handed down by the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases, including measures relating to appropriate procedures for the adjudication of land titles.

Access to justice

80. The Special Rapporteur recommends:

(a) The establishment of a specialized unit of the Public Prosecution Service within the criminal justice system to deal with offences involving the collective or individual rights of indigenous peoples. The Attorney General's Office should grant this unit the powers, resources and means that it needs to conduct its work in the nation's courts in a prompt and efficient manner. This unit should, in addition, submit such applications and petitions to the nation's criminal courts as may be necessary to help to ensure that the courts' decisions are in conformity with international human rights standards concerning the rights of indigenous peoples;

(b) The establishment of prosecution services and courts specializing in indigenous law that are empowered to assert jurisdiction over civil cases relating to indigenous peoples, communities, families and persons or, alternatively, the adoption of legislative reforms that establish special procedures in each jurisdiction in order to guarantee full respect for indigenous peoples' rights as recognized in the Constitution and in international human rights law. It is also recommended that steps be taken to ensure that these justice officials possess adequate experience in the area of indigenous peoples' rights;

(c) The redoubling of efforts to provide training to judges and other justice officials regarding indigenous peoples' rights and legal systems and to harmonize the national and indigenous legal systems;

(d) The adoption of the necessary measures to provide prompt and full reparation for all the violations of indigenous peoples' human rights that have been documented by the Truth and Justice Commission, in accordance with international human rights standards and the rights of indigenous peoples, and of the measures and action plans that are needed to comply with the Commission's recommendations.

Racism and discrimination

81. The Special Rapporteur recommends:

(a) The immediate adoption of a general law prohibiting all forms of discrimination, including discrimination against indigenous peoples;

(b) The adoption of special measures to counter the discrimination faced by indigenous peoples in all areas, including access to basic social services, health, education, participation in public life and documentation.

Consultation and consent

82. **The Special Rapporteur recommends that the Government fulfil its obligation to hold consultations with indigenous peoples, including through the adoption and implementation of legislative instruments. The Special Rapporteur wishes to stress that the formulation of any procedure or instrument to facilitate or regulate the right to consultation and to free, prior and informed consent should be carried out with the full and effective participation of the indigenous peoples of Paraguay.**

Socioeconomic situation

83. **The Special Rapporteur recommends:**

(a) The reinforcement of the National Institute for Indigenous Affairs (INDI), which should be allocated a larger, regular and predictable budget and granted the power to coordinate all public policies relating to indigenous peoples, including by means of its conversion into a ministry with full powers;

(b) The establishment of an in-depth dialogue with indigenous organizations, advocacy organizations and the donor community, including United Nations entities, concerning the socioeconomic status of the indigenous peoples of Paraguay in order to identify the underlying causes of the current worrisome situation and to design effective public policies for resolving it;

(c) The provision of support to indigenous peoples, including financial and technical support when they so request, by the Government of Paraguay, entities of the United Nations and the donor community with a view to enabling indigenous peoples to formulate and implement their own freely determined development proposals;

(d) The urgent implementation of the recommendations issued by various United Nations entities, special procedures mechanisms and treaty bodies that deal with indigenous peoples' labour rights, access to employment and working conditions;

(e) The design and effective implementation of a REDD+ programme and the application of the associated social and environmental safeguards, which include respect for indigenous peoples' rights and knowledge, guarantees for their full and effective participation and the prevention of deforestation, among other measures;

(f) Full recognition of and respect for the rights of indigenous peoples as they apply to the activities involved in the conservation and sustainable use of biodiversity, especially in terms of the establishment and management of protected areas that affect their lands, territories or natural resources. The indigenous peoples concerned should be consulted with a view to obtaining their consent prior to the establishment of such areas and should participate in their management;

(g) Thorough research into how the spraying of pesticides and other agrochemical products impairs the health and other human rights of members of indigenous communities. The Government should adopt and implement legislation to regulate the use of such products and duly compensate those who have been harmed by them.

Education

84. **The Special Rapporteur recommends:**

(a) The formulation, adoption and implementation of a national public policy on indigenous education that gives effect to indigenous peoples' right to education, which includes their right to establish their own educational systems in their own languages. The policy should also provide for special measures to ensure access to the general education system, especially at the secondary and tertiary levels;

(b) The implementation of a review of the curricula used in the general education system in order to ensure that they promote interculturalism and contribute to a better understanding of and due respect for indigenous peoples and their history, heritage, culture and rights.

Health

85. **The Special Rapporteur recommends the adoption, without delay, of a new law on health care for indigenous peoples and of all the administrative and budgetary measures necessary for its implementation so that indigenous peoples may fully enjoy their right to health, which includes the right to the protection of their traditional health practices, the use of a suitable intercultural approach in health-care facilities and the elimination of discriminatory practices in health-care systems.**

Indigenous women

86. **The Special Rapporteur recommends that the Government work with indigenous women to compile disaggregated data on all aspects of their situation, including violence against women, women's socioeconomic status, general and sexual and reproductive health, trafficking in persons and other issues, and that it adopt the necessary targeted policies for indigenous women.**

Peoples in voluntary isolation

87. **The Special Rapporteur recommends the adoption of the necessary measures for ensuring the survival of indigenous peoples in voluntary isolation and eliminating the risks of unwanted contact that appear to exist at present, taking into account the Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay. Due attention should be paid to the situation of groups in initial contact.**

C. Specific recommendations

88. **The Special Rapporteur recommends that the Government of Paraguay accelerate the process of according recognition to the ancestral lands claimed by the Ayoreo Totobiegosode people and that all private property owners in the area cooperate with the Government and, in good faith, engage in dialogue with the Ayoreo Totobiegosode and representatives of their institutions in order to settle this claim justly and definitively.**

89. **Until such time as an equitable procedure for land title adjudication has been conducted, the State should take whatever measures are necessary to prevent further violations of the rights of the Ayoreo Totobiegosode in relation to their lands, territories and resources, including by means of the suspension of any**

relevant permits and of any works, projects or activities on the claimed lands, including privately owned property.

90. **The Special Rapporteur recommends that the Government take the necessary measures to ensure the favourable settlement, as a matter of urgency, of the land claim submitted to the National Institute for Indigenous Peoples (INDI) in 1999 by the Avá Guaraní community of Y'apo. The authorities should guarantee the personal safety of the community's members while their claim is being settled, investigate and punish those responsible for the attacks perpetrated against the community and ensure that the community receives just reparation for the damages it has sustained.**

91. **The Special Rapporteur also recommends that the Government take all necessary measures to finally give effect to the conveyance of the lands awarded to the Mbyá Guaraní community of Cheiro Ara Poty.**

92. **The Special Rapporteur recommends that a dialogue be established among all stakeholders, including the indigenous peoples concerned, in the cases relating to indigenous communities that have been affected by the construction of the Yacyretá dam with a view to developing a plan for the provision of reparation and compensation and a strategy for its implementation. The Special Rapporteur recalls the right of indigenous peoples to obtain reparation by means of the recovery of the lands or territories that they had previously owned or utilized and had lost without their consent and, if this is not possible, by means of the award of lands, territories and resources that are of a quality, size and legal status similar to those that they had previously owned or occupied.**

Appendix

[*Spanish only*]

Organizaciones indígenas participantes en la reunión de trabajo con la Relatora Especial (Asunción, 25 de noviembre de 2014)

Articulación de Mujeres Indígenas del Paraguay (MIPY)

Asociación Angaite de desarrollo comunitario (ASADEC)

Asociación Centro Cultural y Social del Pueblo Nivaklè (Zona PILCOMAYO)

Asociación de Comunidad Indígenas Lumnanas (MANJUI)

Federation of Ijaw Communities

Unión de Comunidades Indígenas de Centla, A.

Asociación de Comunidades Indígenas de Itapúa (ACIDI)

Asociación de Comunidades Indígenas del Pueblo Pai Tavyterá Pai Reta Joajú

Asociación de Comunidades Indígenas Guaraní de Alto Paraná (ACIGAP)

Asociación de Comunidades Mbya Mba-e Pu Pora

Asociación de Comunidades Mbya Opy Porá Mbaraetera

Asociación de Educadores Aborígenes Bajo Chaco (ASEAPI)

Asociación de Maestros Indígenas de Caaguazú (AMIC)

Asociación Indígena de San Pedro (ASISPE)

Asociación Indígena del Pueblo Mbya Cheiro Ara Poty

Asociación Pai Tavyterá Reko Pave

Asociación Pueblos Indígenas de Canindeyú

Comunidad Cerro Poty

Comunidad Sarayacu

Urban Community of Niamey

Comunidad Xamok Kasek

Consejo Continental de la Nación Guaraní (CCNG) y Kueringi Moisekoty

Consejo de Pueblos Indígenas del Chaco (CPI Chaco)

Coordinadora de Líderes Indígenas del Bajo Chaco (CLIBCH)

Coordinadora Nacional de Organizaciones de Mujeres Trabajadoras Rurales e Indígenas (CONAMURI) y CONAMURI Juventud

Federación de Asociaciones de Comunidades Indígenas Guaraníes (Región Oriental)

Federación de Pueblos Indígenas del Chaco Paraguayo (FEPOI CHACO)

Federacion Nativa Aché del Paraguay (FENAP)

Federación por la Autodeterminación de los Pueblos Indígenas (FAPI)

Kuña Guarani Aty

Movimiento Pueblos Originarios (MPO)

Organización del Pueblo Enthlet Norte (OPEN)

Organización del Pueblo Guarani

Organización del Pueblo Nivaklé (OPN)

Organización del Pueblo Ñandeva

Organización Mismo Indigena (OMI)

Organización Nacional de Aborígenes Independientes (ONAI)

Organización Payipie Ichadie Totobiegosode (OPIT)

Red Juvenil Indígena

Union of Indigenous Communities of the Yshir Nation (U.C.I.N.Y)

Unión de Nativos Ayoreo del Paraguay (UNAP)